

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4142 of 1983

Date of decision: 14-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PR DHRUV

Versus

MUNICIPAL CORP, JAMNAGAR

Appearance:

MR MANOJ N POPAT for Petitioners
MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

Challenge is made by the petitioners to the notice of termination of their services at annexure-A to the petition. Though only one notice has been produced

in case of one of the petitioners, there is no dispute that similar notice has been given to other petitioners also. Firstly the learned counsel for the petitioner contended that retrenchment was not necessary as the financial condition of the company was not sound. The second contention raised by the learned counsel for the petitioners is that the doctrine of last come first go has not been adhered to while making retrenchment of the petitioners. Lastly the counsel for the petitioners contended that the notice of termination has been given in breach of the provisions of section 33(1)(a) of the Act. This change of service conditions of the petitioners is pending consideration before Conciliation Officer.

2. On the other hand counsel for the respondents contended that the special civil application is not maintainable as the petitioners have already raised industrial dispute against the notice of termination before the Conciliation Officer. Mr. J.R. Nanavati, learned counsel for the respondent contended that retrenchment was necessary as the financial condition of the Company was not sound. It has next been contended that the principle of first come last go has been followed in the present case, and seniority list of the employees was prepared and published before making retrenchment and it retrenchment was made in accordance with the seniority of the concerned employees. So far as the contention of the counsel for the petitioner regarding breach of the provisions of section 31(1)(a) is concerned, the counsel for the respondent contended that the petitioner could have filed complaint or this point could be raised in the reference.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. From the document at page 34 of the petition it is clear that no more doubt remains that the petitioners approached the Conciliation Officer, and the proceedings are pending before the Conciliation Officer. I fail to see any justification with the petitioners approaching this Court. In para 16 of the special civil application also the petitioners have admitted that they had made application to the Conciliation Officer before whom the conciliation proceedings are pending. Notice of that application has also been served on them, but they remained absent. The petitioners further admitted that the communication dated 19th August, 1983 from the Conciliation Officer was received by the General Secretary of the Union recording that the matter is pending and decision will be taken thereon. Where

statutory remedy is provided and the same is availed by the petitioners and it is pending adjudication before the competent authority, the petitioners should have waited for the outcome thereof and should not have resorted to the parallel remedy by way of this writ petition. In this respect reference may be made to the decision of the Supreme Court in the case of Bombay Metropolitan Region Development Authority vs. Gokar Patel Volkart Ltd., (1995) 1 SCC 642. There is yet another reason for not entertaining this writ petition. Parallel remedy remedies in respect of same cause of action in a matter at the same time ordinarily should not be permitted. Petitioners have themselves approached the concerned authority and they should have stuck to that proceeding to carry it its logical conclusion. Learned counsel for the petitioners is unable to make any statement before this court how ultimately those proceedings have culminated. There may also be the possibility of the matter being pending. But one fact is undisputed that the day on which the petitioners approached this court the proceedings initiated before the Conciliation Officer were pending.

4. In view of the aforesaid facts I am satisfied that this writ petition is not maintainable. As the petitioners have already availed of statutory alternate remedy, I do not consider it proper to on to decide the contentions raised by the learned counsel for the petitioners.

5. In the result this special civil application fails and the same is dismissed only on the ground that the petitioners have already availed of alternate remedy. Rule discharged. No order as to costs.

.....

csm